

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

326 LAND COMPANY, LLC, a Michigan
limited liability company,

Plaintiff,

v

CITY OF TRAVERSE CITY, a Michigan
Home Rule City, SHAWN WINTER, City
Planning Director,

Defendants.

Case No. 1:22-cv-45

Honorable Paul L. Maloney

Magistrate Phillip J. Green

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO
COUNTS IV AND V OF PLAINTIFF'S
COMPLAINT PURSUANT TO FRCP
12(c) AND FRCP 56(a)**

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NOW COMES the Plaintiff, 326 Land Company by its attorneys Mika Meyers PLC and for its Motion for Summary Judgment as to Counts IV and V pursuant to FRCP 12(c) and FRCP 56(a) states as follows:

1. As supported fully in the brief being filed with this motion, Plaintiff is entitled to summary judgment on Count IV, based on the binding precedent in *Save Our Downtown v City of Traverse City* ____ Mich App ____; ____ NW3d ____; 2022 Lexis 6164 (Mich Court App No. 359536, October 13, 2022). Based on that decision, the City was and is in error not to follow the Traverse City Zoning Ordinance and its Implementation Policy for Section 28 of the City Charter, and, as a result the rooftop appurtenances extending from the top of the 326 Land building,

including mechanical equipment, stairway access, and elevator shafts, do not trigger the requirement of vote under Section 28 of the City Charter. There was therefore no proper basis for revocation of the land use permit, or the issuance of the stop work order against construction.

2. As supported fully in the brief being filed with this motion, Plaintiff is entitled to summary judgment on Count V of the Complaint because the *Save Our Downtown v City of Traverse City*, supra, decision is binding precedent that Section 28 of the City Charter is invalid.

3. Concurrence of the relief sought by this motion was requested by Opposing Counsel, and was refused in a telephone discussion that took place on June 8, 2023.

THEREFORE, Plaintiff respectfully requests that this honorable Court grant this motion for Summary Judgment as to Counts IV and V, and grant Plaintiff the relief as outlined in the brief being filed in support of this motion.

Respectfully submitted,

MIKA MEYERS PLC
Attorneys for Plaintiff

Dated: 6/9/23

By: 

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